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10 **ARIZONA DEPARTMENT OF WATER RESOURCES**

11 **BEFORE THE DIRECTOR**

12 **IN THE MATTER OF THE**
13 **ADOPTION OF THE MANAGEMENT**
14 **PLAN FOR THE PINAL ACTIVE**
15 **MANAGEMENT AREA FOR THE**
16 **FOURTH MANAGEMENT PERIOD**

17 **MOTION FOR REHEARING**
18 **OR REVIEW**

19 Pursuant to A.R.S. § 45-114(C), Central Arizona Irrigation & Drainage District
20 (“CAIDD”), through its counsel, hereby files this Motion for Rehearing or Review of the
21 Order of Adoption of the Management Plan for the Pinal Active Management Area for the
22 Fourth Management Period (“Motion for Rehearing or Review”). CAIDD respectfully
23 requests that the Director of the Arizona Department of Water Resources (“ADWR”)
24 review and revise the Order of Adoption of the Management Plan for the Pinal Active
25 Management Area for the Fourth Management Period (“Order of Adoption”) for the
26 following reasons: (1) ADWR did not seek to convene or meet with the Agricultural Water
27 Conservation Best Management Practices Advisory Committee (“BMP Advisory
28 Committee”) as required by Executive Order 2002-9, *Arizona Administrative Register*,
Vol. 8, p. 12 (June 30, 2002). Consequently, the BMP Advisory Committee did not make
recommendations to the Director of ADWR regarding the Agricultural Best Management
Practices Program (“BMP Program”) for the management plans for the fourth management
period; (2) the changes to the BMP Program are based on incomplete analysis using
inadequate data and methodologies; (3) the changes set forth in the Management Plan for

1 the Pinal Active Management Area for the Fourth Management Period (“Pinal Fourth
2 Management Plan”) are inconsistent with the unique management goal of the Pinal Active
3 Management Area (“Pinal AMA”), and (4) reduction of the highest twenty-five percent
4 (25%) of water duties within an area of similar farming conditions by up to ten percent
5 (10%), described in the Base Program, Section 4.3.1 of the Pinal Fourth Management Plan,
6 is not consistent with the unique management goal of the Pinal AMA.

7 **I. ADWR Did Not Seek to Convene or Meet with the BMP Advisory Committee**
8 **as Required by Executive Order 2002-9.**

9 On June 30, 2002, Governor Jane Dee Hull established the BMP Advisory
10 Committee “for the purpose of advising the Director of [ADWR] on ... the development
11 of a [BMP Program] ...for consideration by the Director for inclusion in the [third], fourth,
12 and fifth management plans.” Executive Order 2002-9, *Arizona Administrative Register*,
13 Vol. 8, p. 13. In fulfilling this responsibility, Governor Hull ordered the BMP Advisory
14 Committee to do the following things:

- 15 1. Recommend, in consultation with the agricultural community and ADWR, a BMP
16 program that can be applied to the majority of farm units with the AMAs.
- 17 2. Recommend detailed criteria for evaluating agricultural water management
18 practices including any best management practices as they pertain to the
19 development of an Agricultural BMP Program.
- 20 3. Review and evaluate research projects, both in Arizona and elsewhere if
21 appropriate, undertaken to evaluate current management practices and any
22 comprehensive best management practices programs.
- 23 4. Evaluate the relationship between the Agricultural BMP Program and the Base
24 Agricultural Conservation Program required by A.R.S. §§ 45-567 and 45-568.
- 25 5. Review and evaluate proposed best management practices, recommend any changes
26 in and BMP Program included in the management plans, consider what research or
27 educational resources are necessary to develop new best management practices, and
28 make recommendations on any new best management practices to be developed and
implemented.
6. Make recommendations to develop an educational program concerning adoption of
best management practices and participation in a BMP program.

1 Governor Hull also mandated that the BMP Advisory Committee consist of the following
2 members, to be appointed by her or her successor:

- 3 1. The Director of ADWR or the Director's designee,
- 4 2. The Director of the Department of Agriculture or the Director's designee,
- 5 3. The Director of the United States Department of Agriculture, Water Conservation
6 Laboratory, or the Director's designee,
- 7 4. Four persons actively engaged in agricultural production in an active management
8 area, of which two have expressed an interest in participating in or are currently
9 participants in a best management practices program,
- 10 5. Two persons representing irrigation districts established pursuant to Title 48,
Chapter 19, Arizona Revised Statutes, in an active management area,
- 11 6. A representative of an agricultural improvement district established pursuant to
12 Title 48, Chapter 17, Arizona Revised Statutes, and
- 13 7. A representative of a municipality in an active management area.

14 The purpose of the BMP Advisory Committee is to include members of the agricultural
15 community in the development and implementation of a BMP program. That way, the
16 program or changes to the program are based on criteria agreed upon by members of the
17 agricultural community as well as the best data, research, and technology available
18 regarding agricultural management practices, and it can actually be applied on the majority
19 of farms in the AMAs. Although ADWR has engaged in significant public outreach over
20 the last year or so, members of the agricultural community were not actively involved in
21 the development of the BMP Program. Because the BMP Program was developed without
22 sufficient input from the agricultural community, CAIDD requests that ADWR delay final
23 adoption of the BMP Program for the fourth management period until the BMP Advisory
24 Committee can meet and make recommendations to the Director.

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1 **II. The Changes to the BMP Program in the Pinal Fourth Management Plan Are**
2 **Based on Incomplete Analysis Using Inadequate Data and Methodologies.**

3 ADWR's analysis of the effectiveness of the BMP Program is incomplete, and the
4 data and methodologies used to compare the BMP Program with the Base Program are
5 inadequate. *See* Letter from Chris Michie, General Manager, CAIDD to Thomas
6 Buschatzke, Director, ADWR (June 5, 2020). ADWR's direct comparison of current water
7 usage for Irrigation Grandfathered Rights ("IGFR") in the BMP Program with current
8 water usage for IGFRs that remain in the Base Program is not the proper method of
9 evaluating whether the BMP Program was effectively designed to achieve conservation
10 equivalent to the Base Program, as required by A.R.S. § 45-567.02(G). Such a comparison
11 does not account for important differences among the farms at issue and the reasons
12 underlying decisions to enroll certain IGFRs in the BMP Program. For example,
13 comparing total water use per irrigation acre does not account for the augmentation in water
14 supplies in a given year due to the availability of Central Arizona Project water, effluent,
15 and underground storage credits, nor does it consider changes based on market
16 considerations such as the cost of water or crops and seasonal variations based on crop
17 changes. Furthermore, because many BMP farms formerly relied on flexibility credits to
18 support their operations, it is not clear that those farms actually would use less groundwater
19 if they were regulated under the Base Program instead.

20 To evaluate whether the BMP Program is designed to achieve conservation
21 equivalent to the Base Program, ADWR should analyze: (1) whether current BMP farms
22 would use less water if the same IGFRs were regulated instead under the Base Program; or
23 (2) whether overall groundwater conservation for all BMP and Base Program farms is at
24 least equivalent to conservation that would be required if all IGFRs instead were regulated
25 by the Base Program. If the total groundwater use of all Base Program and BMP farms is
26 less than the combined total groundwater allotment if all IGFRs remained in the Base
27 Program, ADWR does not need to modify the BMP Program for the fourth management
28

1 period. Because ADWR's analysis of the effectiveness of the BMP Program is incomplete
2 and the data and methodologies used to compare the BMP Program to the Base Program
3 are inadequate, CAIDD requests that ADWR delay final adoption of the BMP Program for
4 the fourth management period.

5 **III. The Changes to the BMP Program Set Forth in the Pinal Fourth Management**
6 **Plan are Not Consistent with the Unique Management Goal of the Pinal AMA.**

7 The management goal of the Pinal AMA is unique. Rather than adopting "safe-
8 yield" as the management goal, like it did in most of the other AMAs, the Arizona
9 Legislature defined the management goal of the Pinal AMA "to allow the development of
10 non-irrigation uses as provided in [the Groundwater Code] and to preserve existing
11 agricultural economies in the [AMA] for as long as feasible consistent with the necessity
12 to preserve future water supplies for non-irrigation uses." A.R.S. § 45-562(B). The
13 changes to the BMP Program in the Pinal Fourth Management Plan are not consistent with
14 the unique management goal of the Pinal AMA because they are not designed to 'preserve
15 existing agricultural economies in the AMA for as long as feasible.' While CAIDD
16 recognizes that it is also important to 'preserve future water supplies for non-irrigation
17 uses,' ADWR has not demonstrated how the changes to the BMP Program in the Pinal
18 Fourth Management Plan will 'preserve existing agricultural economies in the AMA for as
19 long as feasible.' To the contrary, the changes may have the opposite result of reducing
20 available supplies of groundwater to agriculture at the same time that Central Arizona
21 Project water supplies are reduced or eliminated to meet the requirements of the Drought
22 Contingency Plan. Rather than preserving agricultural economies, reducing the available
23 supply of groundwater through conservation requirements that are based on incomplete
24 analysis using inadequate data and methodologies will significantly impact the viability of
25 farms in the Pinal AMA. Because the changes to the BMP Program in the Pinal Fourth
26 Management Plan are not consistent with the unique management goal of the Pinal AMA,
27 CAIDD requests that ADWR delay final adoption of the Pinal Fourth Management Plan
28 and revise the Plan to be consistent with the unique management goal of the Pinal AMA.

1 **IV. Reduction of the Highest 25% of Water Duties in the Base Program by up to**
2 **10% Is Not Consistent with the Unique Management Goal of the Pinal AMA.**

3 Reduction of the highest twenty-five percent (25%) of water duties within an area
4 of similar farming conditions, described in the Base Program, Section 4.3.1 of the Pinal
5 Fourth Management Plan, is not consistent with the unique management goal of the Pinal
6 AMA. "In setting the irrigation water duty or intermediate water duties for the fourth
7 management period, the director *may* adjust the highest twenty-five percent of the final
8 irrigation water duties established within an area of similar farming conditions pursuant to
9 section 45-566 by reducing each water duty in an amount up to ten per cent" A.R.S.
10 § 45-567(A)(1) (emphasis added). While the director has the discretion to reduce these
11 water duties by up to ten percent (10%), it is not mandatory to do so, and the reduction of
12 these water duties is not consistent with the unique management goal of the Pinal AMA.
13 Therefore, CAIDD requests that ADWR revise the Plan and decline to reduce the highest
14 twenty-five percent (25%) of water duties within an area of similar farming conditions by
15 up to ten percent (10%) because of the unique management goal in the Pinal AMA.

16 **V. Conclusion.**

17 In sum, CAIDD requests that ADWR convene the Agricultural BMP Committee as
18 soon as possible so that it can make recommendations to the Director regarding the BMP
19 Program, as required by Executive Order 2002-9. Furthermore, CAIDD requests that
20 ADWR delay final adoption of the BMP Program in the Pinal Fourth Management Plan
21 because the Agricultural BMP Committee did not meet and make recommendations,
22 ADWR's analysis of the effectiveness of the BMP Program is incomplete, and the data and
23 methodologies used to compare the BMP Program to the Base Program are inadequate. In
24 addition, CAIDD requests that ADWR delay final adoption of and revise the BMP Program
25 in the Pinal Fourth Management Plan to be consistent with the unique management goal of
26 the Pinal AMA. Finally, CAIDD requests that ADWR revise the Base Program in the Pinal
27 Fourth Management Plan and decline to reduce the highest twenty-five percent (25%) of
28 water duties within an area of similar farming conditions by up to ten percent (10%)
because of the unique management goal in the Pinal AMA.

1 DATED this 26th day of October 2020.

2 TSL LAW GROUP, PLC

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11 **CERTIFICATE OF SERVICE**

12 ORIGINAL of the foregoing mailed this 26th day of October 2020 for filing with:

13 Docket Supervisor
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